

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
Domestic Section 214 Application for the) WC Docket No. 07-286
Transfer of Assets of OneEighty Networks, Inc.)
to OrbitCom, Inc.)

COMMENTS OF MIDCONTINENT COMMUNICATIONS

Midcontinent Communications (“Midcontinent”), by its attorney, hereby submits its comments on the above-referenced application.¹ For the reasons described below, the Commission should remove the application from streamlined processing and should not authorize transfer of the OneEighty Networks Section 214 authorization until the transferee provides assurances that it will comply with the Commission’s rules governing customer transfers.

An applicant for transfer of a Section 214 authorization can qualify for a presumption that it is entitled to streamlined processing if it meets one of several tests in Section 63.03 of the Commission’s Rules. 47 C.F.R. § 63.03(b). The presumption of streamlined processing is granted in circumstances in which the Commission has concluded that, typically, a transaction will pose no threat to competition.² However, that presumption can be overcome if there is reason to believe that grant of the application could have a negative effect on competition in the relevant market, based on market characteristics or the applicant’s behavior. Indeed, the rules specifically provide that an application can be removed from streamlined processing if “[t]imely-filed

¹ See Domestic Section 214 Application Filed for the Transfer of Assets of OneEighty Networks, Inc. to OrbitCom, Inc., *Public Notice*, WC Docket No. 07-286, rel. Dec. 13, 2007.

² Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, *Report and Order*, 17 FCC Rcd 5517, 5533 (2002).

comments raise public interest concerns that require further Commission review.” 47 C.F.R. § 63.03(c)(iv). This is such a case.

As described in the informal complaint attached hereto as Attachment 1, OrbitCom is engaged in a series of ongoing violations of Commission rules and policies that are intended to promote competition in the telephone marketplace. In particular, OrbitCom has, for at least the last seven months, refused to transfer customers promptly after preferred carrier freezes are lifted, refused to permit porting of customer telephone numbers in violation of the Commission’s rules and repeatedly violated the Commission’s prohibition on contacting soon-to-be-former customer for winback purposes.

OrbitCom’s violations of the Commission’s rules and the Communications Act speak directly to the competitive issues at the core of the Commission’s analysis in transfer of control applications. It is difficult to imagine a set of actions that are more anticompetitive than refusing to permit customers to exercise their right to change carriers and using the resulting delays in the changeover to attempt to convince those customers not to switch. These actions are more than sufficient to overcome the presumption in favor of streamlined processing in Section 63.03.

It may be possible, ultimately, that the Commission can grant this application if OrbitCom provides appropriate assurances that it will cease its unlawful, anticompetitive behavior and takes steps to address the damage it has done. Until that time, however, there is no basis for authorizing the proposed transfer of control, and there certainly is no basis to grant the application under the streamlined processing rules.

For all these reasons, Midcontinent Communications respectfully requests that the Commission (1) remove the above-referenced application from streamlined processing in accordance with Section 63.03(c)(iv) of the rules; and (2) deny the application unless OrbitCom can provide sufficient assurance that it will come into compliance with the Commission's rules governing number portability, preferred carrier freezes and contact with soon-to-be-former customers.

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By: _____/s/_____
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December 27, 2007

CERTIFICATE OF SERVICE

I, Cynthia Forrester, a legal secretary at Dow Lohnes PLLC, do hereby certify that on this 27th day of December, 2007, copies of the foregoing Comments of Midcontinent Communications were served via first class mail postage prepaid or by email (denoted by *) to the following:

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Attachment 1

**Informal Complaint
Filed December 21, 2007**